Sectt. II-27—25,006—27-10-

Laco (1934) Department

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1 K SERIES.

G.O. No. 46

DATED 6/1/1934

[Despatch Abstract.]

Criminal Appeal - Appeal against acquittal - C.A.No.12/3

on the file of the Sessions Judge, South Kanara - Declined.

Ref. C--1--4237/1/33.

South Kanara District Magistrate's Office,
Mangalore, dated 11th November 1933

From

E. M. Gawne, Esq, I.C.S.,
District Magistrate,
South Kanara.

To

The Secretary to Government,
Law (General) Department,
Madras.

Sir,

Criminal Justice--Criminal Appeal 12/33 on the file of the Sessions Judge, South Kanara-in C.C. 89/32 on the file of the Sub Divisional Magistrate, Puttur--Appellate order of Acquittal--Appeal against acquittal--recommended.

In C. C. No. 89/32 on the file of the Sub Divisional Magistrate, Puttur, accused T. Pokrali, Potail of Nileshwar village Kasaragod Taluk, was convicted of the offence of escape from lawful custody under section 225 B I.P.C. on the complaint filed by the District Munsiff of Kasaragod. In Appeal C.A. 12/33 the Sessions Judge reversed the conviction and acquitted the accused on 28.9.1933 by holding that the arrest was illegal as the accused was arrested within a few yards from the Munsiff's Court, that the suit C.S. No. 65/25 in which the accused was the 4th Defendant had been posted for the written statement of the accused for that day and that under section 135 (2) of the Code of Civil Procedure the accused is exempt from arrest.

2. The Public Prosecutor, Mangalore, has proposed in his letters Nos. Cr. 15/33 dated 3rd October 1933 and Cr. 22/33 dated 28th October 1933, that it is necessary to prefer an appeal from this appellate order of acquittal passed by the Sessions Judge. I have perused the records of the case and I agree with the Public Prosecutor that this is a fit case for appeal.

3. The accused was only one of several defendants in the suit O. S. 65/25 in question and it is pretty clear that he was not summoned to court that day, nor did his arrest delay the conduct of the suit. On the contrary, he first signed the written statement and then went to Jamabandi in the Kasaragod Taluk office the building of which adjoins the District Munsiff's Court building in the same compound. The Vakil who was examined as D. W. 1 in this Criminal case filed the written statement himself a week later, which shows conclusively that the accused's actual presence was not required for the filing. It is clear from section 135 (c) of the Code of Civil Procedure that the decision whether the man was or was not arrested 'while going to such tribunal' is a question of fact to be decided by the Court before it lays a complaint. In this case the complaint filed by the District Munsiff was a detailed one and stated further that the plea of the accused for not appearing before the Court was not illegal arrest but illness at his village. At that date therefore the accused had not thought to say that he was attending the Court and this excuse was only brought forward in defence. The Vakil D.W.1 said that he did not mention to the District Munsiff that the arrest was illegal nor was there any documentary evidence. There is therefore nothing to show that, as the Sessions Judge says, the accused represented though his Vakil that he was exempt and that he was overruled.

4. The order of acquittal is thus clearly wrong. Offences of this kind are of frequent ocurrences in the Courts here. The accused was the headman of a big village. The Sessions Judge's judgment of acquittal will, I consider, have serious consequences on the Administration of Justice. I recommend that the Government may be pleased to direct the Public Prosecutor, Madras to present an appeal to the High Court from the appellate order of acquittal passed by the Sessions Judge.

5. I enclose herewith copies of judgments of the original and appellate courts and also letters in original of the Public Prosecutor, Mangalore for favour of reference.

Your obedient servant,

Dt. Magistrate.

2283

Government Pleader & Public Prosecutor's Office,

No. Cr.-15/33. Mangalore 3rd October 1933.

From

M. R. RY. M. N. PRABHU AVERGAL, B. A., B. L.
Public Prosecutor, Mangalore.

To

THE DISTRICT MAGISTRATE,
South Kanara, Mangalore.

Sir,

Criminal Appeal No.12/33- Sessions Court-C.C.No.09/32- Sub Divisional Magistrate, Puttur. T. A. Pokrali - Appellant.

I have the honour to bring to your notice an acquittal in appeal by the Sessions Judge in Criminal Appeal No. 12/33, reversing the conviction in Calendar Case No.09/32 on the file of the Sub Divisional Magistrate of Puttur, with a view to consider the desirability of filing an appeal against the order of acquittal.

The facts of the case are as follows:-

The District Munsiff of Kasargod filed a complaint against one Pokrali, the Potail of Nileshwar, for escaping from custody under Section 225 B, I.P.C. There was a decree against the accused, who was arrested in execution of the decree by a process-server under Section 55 of the Civil Procedure Code. The accused thereupon was produced before the District Munsiff and he claimed exemption from arrest under Section 135 (2), Civil Procedure Code, on the ground that he had come to Kasargod in connection with a suit against him that had been posted that day for written statement. The District

Munsiff overruled

Munsiff overruled his contention. Then the accused put in a petition before the District Munsiff that his arrest should be extended by two days, as he was making arrangements to give security for the decree amount. The Munsiff then put him in the custody of a separate process-server and the process-server and the accused went to Nileshwar for -- raising the decree amount, and on the day the accused was bound to appear (28-1-1932) he did not appear and escaped from custody and could not be arrested even though several more warrants were taken against him.

The Sessions Judge holds that the arrest by the first process-server on 26-1-1932 was illegal and therefore his escape from custody of the second process-server on 28-1-1932 is justified and he was within his legal rights to do so.

This view of the Sessions Judge if unchallenged will lead to serious difficulties in the administration of civil law, inasmuch as in the view taken by the Sessions Judge one could escape from the civil prison also if committed by the District Munsiff with immunity. The Sessions Judge has not considered the following points which I urged before him:

(1) The arrest is not illegal and the exemption under Section 135 (2) does not make the original arrest illegal.

(2) In any case, the Munsiff having refused to give him the benefit of exemption from arrest under Section 135 (2), that order was final unless set aside by an appellate court. 47 M.L.J. 670.

(3) After the District Munsiff refused to grant him the exemption he put the accused in the custody of a second process-server at the request of the accused himself, who thereby submitted to the arrest and having agreed to appear before the court on 28-1-1932, he was guilty of escape from custody. Vide 1919 M.W.N. 605.

The law is that once arrested the accused

should be treated

should be treated with according to law and he cannot take it upon himself to decide whether the arrest was legal or not and he must submit himself to the orders of the court to get his release. 10 Madras 401; 31 Madras 271; 1932 M.W.N. 1223.

In case the District Munsiff refuses to grant an exemption under Section 135 (2), unless the judgment-debtor gets that order vacated by a proper appeal the order is final and the Magistrate trying the case under Section 295 B cannot go into the legality or correctness of the order of the District Munsiff.

I submit that you may be pleased to consult the Public Prosecutor in Madras in this matter in case you agree with my view.

Your most obedient servant,

M. N. Ravulu

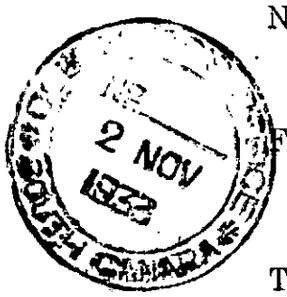
Public Prosecutor.

Copy to the District Superintendent of Police, South Kanara,
Mangalore.

6

Government Pleader & Public Prosecutor's Office

No. Cr.-22/33. Mangalore 29th October 1933.



From

M. R. RY. M. N. PRABHU AVERGAL, B. A., B. L.
Public Prosecutor, Mangalore.

To

THE DISTRICT MAGISTRATE,
South Kanara, Mangalore.

Sir,

Criminal Justice- C.A.12/33- Sessions Court- in C.C.89/32 on the file of the Sub Divisional Magistrate, Puttur- Acquittal- Proposal of appeal.

Your letter Ref.C1-4237/M.33 dated 23-10-1933

The point in this case is whether an accused person has right to ask the Magistrate's Court to reopen once again the question whether he was entitled for exemption from arrest under Section 135(2) after the Munsiff has decided that he was not entitled to it.

Under Section 135(2) a party attending a court in good faith is exempt from arrest and if he is arrested the arrest is illegal. Vide A.I.R.1929 Oudh 426 Full Bench. The Madras High Court does not seem to have accepted this view so far. But, assuming that the arrest is illegal, the accused makes a representation to the court, under whose orders he was arrested, claiming exemption from arrest, and that court refuses to grant him exemption. The law is that the exemption conferred is not for the personal benefit of the individual, but for furthering of public interest. Vide the above case.

If an accused does not believe that his attendance was required in court he is not entitled to the privilege. 13 Madras, 150.

In the present case the District Munsiff of Kasargod refused to give the accused exemption from arrest. May be the accused did not know that he had a case at all before the District Munsiff. From the cross-examination of the prosecution witnesses before the District Munsiff that day it would appear that the accused had gone to Kasargod to attend Jamabandi work and it is only later on that he discovered that he had also a case before the Munsiff that day. The suit papers show that he was a formal defendant among a great many.

However, once the Munsiff gives a finding that he cannot claim exemption, the question is whether a Magistrate can reopen the point. 47 M.L.J.678 is an authority for the proposition that the order of the Munsiff is final until vacated by the appellate court and not by the Magistrate. There is a further point that when the accused

the accused submits to arrest and does not choose to appeal and undertakes to attend court on a particular day, and does not, then he is guilty of escape from custody. vide 1919 Mad.W.N., 695.

I would suggest that the opinion of the Public Prosecutor, Madras, may, if necessary, be obtained before the Government is approached for filing the appeal.

As this concerns a matter which is of frequent occurrence in our courts, the judgment under consideration goes counter to the settled notion and practice and is bound to have far-reaching consequences on the administration of justice, I have thought it necessary to address you on this matter.

Your most obedient servant,

M. V. Ivaveu

Public Prosecutor.

15

Cr. J. Mis. 124—43,187—26-2-32

In the Court of the Sub Divisional I Class Magistrate, Puttur Division.

JUDGMENT IN CALENDAR CASE No. 89/32 ON THE FILE OF THE Sub Divl.IClassMAGISTRATE OF Puttur Division.

Dated the 15th day of March 1933.

Present:--M.R.Ry. A. Harikrishna Naidu, Garu.

Complainant ... ... K.E. (District Munsiff, Kasaragod)

Accused ... ... T.A.Pokrali.

Offence ... ... Escape from lawful custody Section 225 (B) I.P.C.

Finding ... ... Guilty.

Sentence ... ... To pay a fine of Rs.100/- in default to suffer simple Imprisonment for two months.

Serial number	Description of the Accused.						Date of						Explanation of delay
	Name.	Father's name.	Caste or race.	Occupation	Residence.	Age.	Application for [illegible]	[illegible]	Issue of [illegible]	Commencement of trial.	Close of trial.	Sentence or order.	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1.	T.A. Pokrali	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Judgment

The District Munsiff Kasaragod filed a complaint against Pakrali, Patel of Nileshwar for escape from lawful custody an --- offence under section 225 B. I.P.C.

2. When the charge was read over to him, the accused pleaded not guilty. The District Munsiff Kasaragod issued a warrant for the arrest of the accused and it was endorsed to a Process Server P.W3. The latter arrested the accused at 7 A.M. on 26-1-1952 at Kasaragod and produced him before the Deputy Nazir (P.W1) at 11 A.M the same day. Ex. A is the endorsement of P.W1 for the arrest. When the accused was produced before the District Munsiff, the accused filed a detention petition Ex.B for two days. This was granted and the accused was ordered to be produced on 28-2-52. Ex.A2 is the order of District Munsiff. The accused was handed over to the custody of P.W2. Ex.A3 is the order. On 28-1-52 P.W2 reported to P.W1 that the accused went to his village Nileshwar with the process server to secure money or to find sureties but would not leave his house on the score of illness and produced a medical certificate which P.W2 refused to receive. Ex. A4 is his report. He also made a report to the District Munsiff Ex.A5. The latter officer ordered P.W2 to proceed to the village and take the accused into custody and to apply for police aid if resistence was offered. Ex.6 is the letter to the Inspector of Police. P.W2 again went to the village with the Sub Inspector of Police, Hosdrug but did not find the accused either in his house or in the village although he and the Sub Inspector of Police (P.W4) searched for him. His report to the District Munsiff is Ex.A7. The accused never appeared before the court and two fresh warrants Exs. D and E were issued but he was not arrested. Ex.F is the complaint of the District Munsiff.

3. Four witnesses were examined for the prosecution. P.W1 is the Deputy Nazir of the court. He speaks to the above facts. P.W3 is the process server to whom the warrant for the arrest of the accused was entrusted. He arrested the accused in the compound of the Taluk Office Kasaragod within 4 or 5 mars from the

doctor who attended on hi[illegible] not to undertake the journey to Kasaragod. As P.W.2 refused to take the medicine certificate he sent it to the court. He was undergoing treatment in his tarwad house and not in his house and was not aware of the orders passed by the court.

5. Three witnesses were examined for the defence. D.W.1 is a vakil of Kasaragod. He says that the accused was the fourth defendant in the suit and it was posted for appearance and written statement on 26-1-32. The accused came to his office at 8.30A.M that day and signed the statement. Ex.III is the certified copy of the statement filed on 26-1-32. The witness asked the accused to attend the court that day, but he was told at 11 A.M that he was arrested. He filed a vakalat and requested the court to release the accused as he came to the court in connection with a suit but the court did not release him. He did not however tell the court that the accused was arrested on his way to the court. He admits that the written statement might be filed by the vakil but that the Munsiff insists on the presence of the party. D.W.2 is a registered medical practicner of Kotikulam. He went to Mr. Wife's house at Nileshwar on 26-1-32 and not the accused at the Nileshwar Railway station. The accused told him that he had some pain and disorder in the stomach. The witness advised him to starve for the night and to send word to him next morning if he wanted him. On 27th morning; he was sent for and when he went to the accused he found him suffering from dysentry and fever and was not able to travel to Kasaragod. He granted him a certificate as the accused wanted it as he had summons to attend a court. D.W.3 is a Moplah trader of Nileshwar. He says that the accused was unwell with dysentry and fever about the end of January 1932 and that he was ill for 10 days.

6. The vakil for the accused points out that the arrest is illegal as no intimation was sent to the Tahsildar of Kasaragod of the intended arrest of the accused who is a Pottai. Under the Civil rules of practise, intimation of the intended arrest of a Public servant should be sent to the Head of the office. He is

It i. [illegible]
the [illegible]. [illegible]
for t[illegible] relief of the [illegible]
[illegible] not suffer. But it [illegible]
[illegible] against the arrest [illegible]
the arrest on the ground [illegible]
debt. On the other hand [illegible]
process server to the [illegible]
Another point raised [illegible]
on his duty to the court [illegible]
and such arrest is irrelevant [illegible]
to the court. To su[illegible]
[illegible] plaintiff's counsel [illegible]
to him at 8.30 A.M. [illegible]
which was filled in the [illegible]
that though it is dated [illegible]
will be seen from the [illegible]
The contention of the [illegible]
file that document [illegible]
argued that the [illegible]
account of discontr[illegible]
process server. In [illegible]
Mr.H. But when the [illegible]
Police P.C. went to t[illegible]
found either in his [illegible]
sent to his broth[illegible]
Mr. [illegible]ledhar. In [illegible]
ed with the assistance
granted the medical [illegible]
treatment after [illegible]
not indicate certificate [illegible]
to attend court. [illegible]
but told him a lie.
[illegible] on 28-1-32 at
[illegible] attended

7. The accused absconded after the detention order and went to his village with the process server to secure money or sureties but failed to do either. On the other hand he pleaded sickness and obtained a medical certificate telling a lie to the Doctor. He never appeared before the court afterwards. It is clear from the above that the accused escaped from lawful custody. I therefore convict him under section 225 B I.P.C. and sentence him to a fine of Rupees One hundred or in default to simple imprisonment for two months.

Sd/- H.K.Naidu,
Sub Divisional Magistrate.

Appendix

Witnesses examined for

Prosecution

1. Mr. T. Nagesha Rao
2. S. Upendra Shenai
3. Parameshwara
4. Mr. A. Sadashiva Rao.

Defence

1. Mr. Narayana Menon.
2. Dr. O.C Gopalan Nair.
3. P.Kammunhi.

Exhibits filed for prosecution

A	25-1-32	Arrest warrant
A1	26-1-32	Endorsement of P.S.Parameshwara on Ex A
A2	26-1-32	Order of the District Munsiff.
A3	26-1-32	Endorsements on Ex.A.
A4	do.	
A5	do.	
A6	do.	
A7	do.	
A8	do.	
B.	26-1-32	Petition for detention order.
C.	28-1-32	Letter of the District Munsiff to the Inspector of Police Kasaragod.
D1	29-1-32	Report of P.W.4.
D	17-2-32	Arrest warrant.
E.	11-3-32	Arrest warrant.
F.	12-9-32	Complaint of District Munsiff to the Sub Magistrate, Kasaragod.

Defence

I 27-1-32 Medical Certificate produced on behalf of the accused.
II Affidavit produced on behalf of the accused along with Ex.I.
III. Certified copy of the statement of the Defendent in O.S.No.65/25 on the file of the District Munsiff Kasaragod

Sd/- H.K.Naidu,
Sub Divisional Magistrate.

/True copy /

Sub Divisional Magistrate.

In the Court of the Sessions Judge of South Kanara.

The 28th Day of September 1933.

Present:- C. V. Reddi, Esquire, B.A., B.L., Sessions Judge.

Judgment in Crl.Appeal.No.12 of 1933.

From what Court the Appeal is preferred:	Sub Divisional Magistrate, Puttur.
Number of the case in that Court:	C.C.89 of 1932.
Number of the Appeal:	C.A.No.12 of 1933.
Name and description of the appellant:	T.A.Pokrali, son of Abdul Rahiman, residing in Nileshwar
The sentence and law under which it was imposed in the lower Court:	To pay a fine of Rs.100/- in default to suffer simple imprisonment for two months under Section 225-B, I.P.C.
Whether confirmed modified, or reversed, and, if modified, the modification:	Reversed.

Date--of, or on which,

Presentation.	Filing.	Notice issued by Court to appear.	Bail bond if appellant has been let out on bail.	Appellant ordered to appear.	Hearing.	Order.
11.4.33.	12.4.33.	12.4.33.	..	27.6.33. Adjourned to 29/7 as S.C.16 is continuing. Adjourned to 25/8 at the request of appellant's Advocate. Adjourned to 2/9 for want of time. Appeal heard and case again adjourned to 13/9 for want of certain records. Appellant's Advocate absent, adjourned to 26/9.	2.9.33 26.9.33	28.9.33

This appeal coming on for hearing before me, upon perusing the petition of appeal and the record of the evidence and proceedings, and upon duly considering the same after hearing the arguments of Mr. N. N. Suvarna, Advocate for the Appellant and the Public Prosecutor contra I do adjudge and pass the following

JUDGMENT.

The appellant was convicted by the Sub Divisional I Class Magistrate of Puttur for escape from lawful custody under section 225-B I.P.C. and sentenced to pay a fine of Rs.100 and in default to suffer simple imprisonment for two months.

2. He was arrested by P.W.3 on 26.1.1932 under a warrant of arrest issued by the District Munsiff of Kasargod and produced before the District Munsiff the same day. He represented through a Vakil D.W.1 that he was

exempt from arrest as he was on his way to attend the District Munsiff's Court as defendant in O.S.No.65 of 1925. The District Munsiff overruled him and ordered his committal to jail. Thereupon he put in a petition asking for two days' time to pay up the amount. He was left in the custody of another process server P.W.2, who went with him to his village. On 28.1.1932 P.W.2 reported that the judgment debtor refused to go to Court and proceedings were started, which ended in this prosecution and conviction.

3. There is evidence that the man was arrested within four or five marus from the Munsiff's Court. I am satisfied that O.S.No.65 of 1925 had been posted to 26.1.1932 for the written statement of this appellant who was the 4th defendant therein. Under section 135 (2) of the Code of Civil Procedure parties in a matter pending before a tribunal are exempt from arrest while going to and while returning therefrom. The District Munsiff was not therefore right in insisting on the committal of this appellant to jail when he pleaded exemption from arrest. The arrest was therefore illegal.

4. The fact that he subsequently put in a petition for time and paid detention batta would not make the previous arrest or subsequent detention legal. The evidence of the process server (P.W.2) shows that the appellant was suffering from pain and was going to answer calls of nature frequently in the train on his way from the court to his village. On 28.1.1932 a petition was filed by the Vakil asking for a month's time to pay the amount expressing his willingness to furnish security and enclosing a medical certificate that he was suffering from dysentery. The District Munsiff did not accept this also and ordered his appearance the very next day.

5. I find that the arrest was illegal and detention not lawful. The appellant is not guilty of the offence. I allow the appeal and acquit him.

Dictated to shorthand writer and afterwards corrected and pronounced in open court this 28th day of September,

(Sd.) C. V. Reddi,
Sessions Judge.

Leg: (General) Depart

4/11-11

C.No. 5765-B.

Lndt.No. ~~5765-B~~ ~~16-11-33.~~ 5715/B-2 21/11/33.

Criminal appeal
~~Criminal revision~~ petition

~~appeal against acquittal~~
~~enhancement of sentence~~
~~to set aside the order of discharge~~

~~D.C./C.C./~~C.A.No. 12/33 on the file of the Sessions Judge, South Kanara, from the D.M., South Kanara; Ref.No. C.I. 4237/M/33 dt. 11.11.33.

Referred to the P.P./~~Crown Prosecutor~~ -cutor, Madras, for opinion whether an appeal / ~~a criminal revision petition~~ to the High Court against the judgment of the ~~for enhancement of the sentence passed~~ ~~to set aside the order of discharge passed by the~~ Sessions Judge, South Kanara, acquitting ~~accused in~~ The appellant/accused in ~~D.C./C.C./~~C.A. No. 12/33 on his behalf file as likely to be successful.

2/- He is requested to forward his opinion ~~as early as possible~~ to the P.P./~~Crown Prosecutor~~, Madras (with a copy of the D....'s letter/~~letter of the Commr. of Police~~ and its encl. in original to be returned with reply).

15.11.33 Rcd 15/11

BR 16/11/33.

~~Note.~~
Date of judgment 28.9.33

" expiry of the normal appeal time 27.12.33

Rev may see before issue as the limitation of time for filing criminal revision petitions.

accused is a V.M. BR 16/11 15.11.33 Rcd 15/11

Rc 1216/A
11 NOV 1933

L. Dis. No. 5765/B-1
16-11-33.

2

Revenue Dept

May be pleased to return to Law (Legal)

16.11.22

Law (G.)

Lawyers Dept

GS

For orders as to cessation.

KGIV

17.11.22

18

U.F. 30.

JUDICIAL **DEPARTMENT.**

VE L.P 6207 B

2/12/33

Received ..... 192 *Registered* 55 192

DEC 1933

Subject.

Appeal against acquittal - C.A.12/33 -
Sessions Judge, South Kanara.
forwarding opinion.

ENCLOSURES.
No. .....
.....
Spare copies .....

Opinion No. 76 of 33.

Station Madras, *Dated the* 1st December 1933

From (Name) L. H. Bewes Esquire,

(Designation) Public Prosecutor, Madras.

To The Secretary to the Government of Madras,

Law (General) Department.

Sir,

With reference to Endorsement No. 5765 B-1, Law (General) dated 21st November 1933, I have the honour to forward herewith my opinion in the matter.

2. The enclosures received with the endorsement are herewith returned.

I have the honour to be
Sir,
Your most obedient servant,

L. H. Bewes

Public Prosecutor.

RS/1-12.

1112

Endorsement No. 5765 B-1, Law (General) dated 21-11-1933

O P I N I O N

There are certain admitted facts in this case. On the morning of 26-1-1932 between 7 and 9 a.m. the accused was arrested very near the Munsif's Court in execution of a Civil warrant issued by the District Munsif's Court. On that day O.S.No.65/25 in which he was one of the defendants was posted for hearing. He was produced before the District Munsif before whom he claimed exemption from arrest under section 135 Clause 2 of the Civil Procedure Code. The District Munsif over-ruled his objection and committed him to the custody of the peon. Afterwards he put in a petition requesting for detention for two days for the purpose of furnishing security in the matter. The Court granted his request and committed him to the custody of another peon directing him to be produced before Court on 28-1-1932. On that date the accused failed to appear and the peon made a report of the fact that he escaped from his custody.

The question is whether the arrest itself is legal. The warrant is legal and therefore the arrest is legal. Though on the facts of this case, the order of the Munsif over-ruling his objection of exemption from arrest under section 135 clause 2 of the Civil Procedure Code appears to be wrong, still it is a valid order which is appealable under section 47, Civil Procedure Code. He has preferred no appeal against that order. (47 M.L.J.678 and 32 All. page 3).

Under these circumstance if t[illegible] from the custody of the peon who arr[illegible] he will be clearly guilty of t[illegible] I.P.C. But in this case there [illegible] he was produced i[illegible] asked for two days ti[illegible] Munsif granted him t[illegible] another peon ordering t[illegible] Court on 28-1-32. [illegible] such an order. If he [illegible] guilty of an offence under sectio[illegible] appear in court on [illegible] to be considered.

There is [illegible] Procedure Code auth[illegible] of the judgment debtor on his [illegible]

So the whole question [illegible] Is the order of the District [illegible] of the judgment debtor on hi[illegible] of its officer for [illegible] furnish security legal? There [illegible] on this point. 47 Allahabad [illegible] has no power to order the [illegible] on his own application [illegible] proper order in such a case [illegible] to Civil prison or release [illegible] for directing him to appear in court.

1932 Madras Weekly Notes page 1222 lays down that under Or. XXI R.40 (5) under the proviso added by the Madras High Court to sub rule 5 above, it is said that in order to give the judgment debtor an opportunity of satisfying the decree the court may leave the judgment debtor in the custody of its officer for a specific period not exceeding 10 days. But this decision has not specifically considered the question whether in such a case the detention ought to be made on the application of the judgment debtor or decree holder. The matter is highly a technical one; but under the circumstances I do not consider it worth while to take it up to the High Court. I do not therefore advise the Government to file an appeal against acquittal in this case.

L. H. Bass.

Madras,
1st December 1933.

Public Prosecutor.

RS/1-12.

62/6.1

LAW I-4—120—22-12-33.

R 1359/A

Received _____ 193 . Registered 20/12/33 193

Criminal appeal – Appeal against acquittal—~~Negatived~~.

C.A. Case No. 12/33 on the file of the Sessions Judge, South Kanara. – Declined.

LAW (GENERAL) DEPARTMENT.

READ—the following papers :—

[C.No 5765-B] From the District Magistrate, South Kanara, No. C1-423/33 dated 11.11.1933. I pp 1-5 CF

Endorsement to the Public Prosecutor, Madras, No. 5765 B dated 21.11.1933. II p 6 CF

[C.No 6207-B] From the Public Prosecutor, Madras, No. 76/33 dated 1-12-1933. III pp 8-21

46 6-1-34.

ORDER—Mis. No. ~~1120~~, dated ~~20/12/~~ 1933.

The Government do not consider it advisable to appeal to the High Court against the judgment of the Sessions Judge, South Kanara (appellant (accused in C.C.No 89/32 on the file of this Sessions Court)) acquitting the ~~accused~~ in C.A. No. 12 of 1933, on his file.

p 1 CF

S 15.12.33

I NOW 15.12.33.

BR 18/12

If the P. P's opinion is to be departed from, the Adv. Genl will have to be consulted.

(True Extract.) S Leo 19/12/33.

Rev

Secretary to Government.

To

The District Magistrate, South Kanara Q.No I, II, III & IV.

The Public Prosecutor, Madras. (Q No)

p 19-21 CF

p 16 CF Note: Usual appeal time of three months expires on 27.12.33. The P.P. does not advise appeal. Rev.

p 21 CF

S 15/12/33 NOW 15/12

May see prior to circulation BR 18/12 Leo 19/12/33.

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Rec Dept

The draft-on p 1 may be
pencilled & the file returned to Law (Draft)

27/12

S

As the AP.'s opinion discusses the
legal position, I suggest that a cl'y? |
it might be sent to the D to

21/12

Law (Gen.

Law (Gen.)

A.I.

With reference to A above, necessary instructions
have already been given in the despatch entries & communication
of the P.P's opinion to the D.M. for action as to
circulation to Hon. C_ before issue

d. 16268B
21/12
DEC 1933

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BB
3.1.34

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C. 4-1-34

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